

EXHIBIT A

EXHIBIT A

SANDRA KETNER, ESQ.
Nevada Bar No. 8527
SKetner@SHJNevada.com
SIMONS HALL JOHNSTON PC
690 Sierra Rose Drive
Reno, Nevada 89511
Telephone: (775) 785-0088
Fax: (775) 785-0087

Attorneys for Defendant Renown Health

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

LUCERO SANCHEZ,

Plaintiff,

vs.

RENOWN HEALTH, a non-profit Nevada
Corporation, and DOES 1-20, inclusive,

Defendant.

Case No.: 3:21-cv-00352-MMD-CSD

**DECLARATION OF SANDRA KETNER
IN SUPPORT OF DEFENDANT'S
RESPONSE TO NON-PARTY NERC'S
EMERGENCY MOTION TO QUASH
SUBPOENA**

I, Sandra Ketner, hereby deposes and says as follows:

1. I am over eighteen years of age and have personal knowledge of the matters set forth in this Declaration, except as to the matters stated upon information and belief, and so to those matters I believe them to be true. I could and would competently testify about the information that this Declaration contains.

2. I am attorney licensed to practice law in the State of Nevada and am Of Counsel with the firm of Simons Hall Johnston PC, which represents Defendant Renown Health (hereinafter "Defendant" or "Renown") in this action. I also represented Defendant during the Nevada Equal Rights Commission's ("NERC") investigation into Plaintiff's allegations that preceded this action.

1 3. On or about January 16, 2018, the Nevada Equal Rights Commission (“NERC”)
2 issued a Notice of Charge of Discrimination to Renown which included a Charge of Discrimination
3 (hereinafter “the Charge”) filed by Plaintiff Lucero Sanchez alleging discrimination on the basis of
4 her national origin (Hispanic), age (44) and disability. Attached hereto as Exhibit B is a true and
5 correct copy of the Notice of Charge and Charge of Discrimination.

6 4. In her Charge, Plaintiff alleged, “[i]n the summer of 2016 I suffered a workplace
7 injury which resulted in my care provider requesting that I be placed on light duty and I was not to
8 lift more than ten pounds. However, the Respondent continuously required that I work outside my
9 restrictions from the summer of 2016 to the fall of 2017.”

10 5. On April 4, 2018, Defendant submitted a position statement to NERC denying the
11 material allegations of the Charge and asserting that it fully complied with Plaintiff’s physical
12 restrictions imposed by her medical providers. Defendant also provided documentation
13 demonstrating that Plaintiff did not receive permanent lifting restrictions from her medical provider
14 until November 2017. During its investigation, NERC did not request any additional information
15 from Defendant regarding Plaintiff’s lifting restrictions. Rather, all additional requests for
16 information related to Plaintiff’s other claims of discrimination.

17 6. On April 20, 2021, NERC issued a Determination concluding that “probable cause
18 exists for disability discrimination; specifically failure to accommodate.” NERC found that Plaintiff
19 was required to lift in excess of ten pound restrictions for a period of over one year (summer of 2016
20 until the fall of 2017). NERC did not find sufficient evidence to establish adverse action on the basis
21 of disability, age, or national origin but commented that there was a strained relationship between
22 Plaintiff and Defendant. A true and correct copy of NERC’s Determination is attached hereto as
23 Exhibit C.

24 7. Plaintiff commenced this action on August 21, 2021. (ECF No. 1). Thereafter,
25 Defendant issued a subpoena to NERC for its investigation file.

26 8. On December 27, 2021, NERC produced its investigation file in response to
27 Defendant’s subpoena, which included 486 pages of documents. However, NERC’s investigation
28 file does not contain any records or evidence that Plaintiff had lifting restrictions imposed by a

1 medical provider prior to November 2017.

2 9. On August 11, 2022, Plaintiff disclosed Kara Jenkins, NERC Administrator, as a
3 witness in her FRCP 26 Tenth Supplemental Disclosures. On August 18, 2022, Plaintiff disclosed
4 Richard Brown, NERC Investigator, as a witness in her FRCP 26 Eleventh Supplemental
5 Disclosures. Plaintiff described subjects of Administrator Jenkins' and Investigator Brown's
6 knowledge as relating to NERC finding of probable cause and stated that they "may testify as to the
7 facts surrounding this case, including but not limited to, NERC's findings and conclusions."

8 10. Following receipt of Plaintiff's Tenth and Eleventh Supplemental Disclosures, I
9 spoke with Plaintiff's counsel, Luke Busby, who represented that Plaintiff intends to call
10 Administrator Jenkins and Investigator Brown as witnesses at trial and also intends to introduce the
11 Determination at trial.

12 11. On August 19, 2022, I emailed Administrator Jenkins seeking the contact
13 information for the Deputy Attorney General who supports NERC so that I could discuss deposing
14 Administrator Jenkins and Investigator Brown. Administrator Jenkins subsequently put me in
15 contact with Senior DAG Long. On August 30, 2022, Senior DAG Long and I spoke by phone and
16 I proposed limiting the deposition to only Investigator Brown. I also conveyed a desire to reach
17 mutually agreeable terms and limitations for the deposition to avoid motion practice and court
18 intervention. Senior DAG Long was unwilling to agree to any terms and represented that she would
19 provide me with legal authority demonstrating that NERC investigators are immune from
20 depositions. On September 22, 2022, I followed up with Senior DAG Long inquiring about the legal
21 authority she intended to provide. I also provided her with a copy of *Giezie v. Valley Health System,*
22 *LLC*, 2012 WL 3929446 (D. Nev. 2012), which I believe supports Defendant's position. Similar to
23 the limitations imposed by Magistrate Judge Foley in the *Giezie* case, I agreed to limit Investigator
24 Brown's deposition to three hours and ask only factual questions so as not to impinge upon the
25 deliberative process privilege). A true and correct copy of my correspondence with Administrator
26 Jenkins and Senior DAG Long is attached hereto as Exhibit D.

27 12. On September 23, 2022, Senior DAG Long provided correspondence setting forth
28 NERC's position that Investigator Brown could not be compelled to sit for a deposition based

1 primarily upon NRS 233.190 and *United States E.E.O.C. v. Pinal County*, 714 F. Supp. 2d 1073
2 (S.D. Cal. 2010). Senior DAG Long also provided a copy of an Order in *EEOC v. Sun Cab Co., Inc.*
3 (Case No. 2:03-cv-01230-KJD-GWF. Attached hereto as Exhibit E is a true and correct copy of
4 Senior DAG Long's correspondence to me sent on September 23, 2022.

5 13. After finding the legal authority provided by NERC to be either distinguishable or
6 inapplicable, I served Senior DAG Long with a subpoena and notice for Investigator Brown's
7 deposition on September 30, 2022. I conveyed to Senior DAG Long that the date identified in the
8 subpoena and notice was a tentative date and both Plaintiff's and defense counsel were willing to
9 discuss limitations for the deposition. Attached hereto as Exhibit F is a true and correct copy of my
10 correspondence to Senior DAG Long and copying Plaintiff's counsel.

11 14. The medical evidence gathered in this case demonstrates that Plaintiff did not have
12 10 pound lifting restrictions imposed by a medical provider between the summer of 2016 and fall of
13 2017 as NERC's probable cause determination concludes. Instead, Plaintiff had temporary lifting
14 restrictions not to exceed 10 pounds from 7/27/16-8/11/16 and 4/6/17-7/5/17, temporary lifting
15 restrictions not to exceed 20 pounds from 10/4/17-11/9/17, and permanent lifting restrictions not to
16 exceed 20 pounds beginning on 11/9/19. Attached hereto as Exhibit G are true and correct copies
17 of Plaintiff's physical restrictions issued by her medical providers between the summer of 2016 and
18 fall of 2017.

19 15. I hereby declare under penalty of perjury under the laws of the United States and the
20 State of Nevada that the foregoing is true and correct to the best of my knowledge.

21
22 DATED this 19th day of October, 2022.

23
24 /s/ Sandra Ketner
25 SANDRA KETNER, ESQ.
26
27
28